

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Johnny Hartwell,	)	C/A NO. 9:13-361-CMC-BM
	)	
Plaintiff,	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Commissioner, R. Guy Vizzie, Jr., Parole	)	
Board; Commissioner James B. Fergusoo,	)	
Jr.; Commissioner Jennifer Arena;	)	
Commissioner Thomas P. Grant;	)	
Commissioner Patrick M. Gallivan;	)	
Commissioner Joseph P. Crangle;	)	
Commissioner W. William Smith, Jr.;	)	
Commissioner Henry Lemons, Jr.;	)	
Commissioner Smith;	)	
Commissioner Thompson;	)	
Commissioner Crangle;	)	
Andrea W. Evans, Chairman;	)	
Raul Russi, Chairman	)	
	)	
Defendants.	)	
_____	)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On April 10, 2013, the Magistrate Judge issued a Report recommending that this matter be dismissed without prejudice and without issuance and service of process. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has submitted 171 pages of material supporting his complaint, which consists of briefs, transcripts, and

letters associated with his parole hearings in New York. This material was received by the Clerk for filing on April 22, 2013. Additionally, Plaintiff filed objections to the Report on April 29, 2013.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to Plaintiff's objections to the Report, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Plaintiff's objections do not address the underlying infirmities with the complaint; namely, that this case is subject to summary dismissal. Plaintiff presents argument relating to his right to file objections and contends that he received a copy of the Report on April 19, 2013, but that the Report "did not indicate the possible consequences of a failure to object within the appropriate time period."

Obj. at 6 (ECF No. 22). As Plaintiff has timely filed objections, any alleged failure to receive notification of the consequences of failure to respond is harmless.<sup>1</sup>

Therefore, this complaint is dismissed without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
May 2, 2013

---

<sup>1</sup>The Report itself consists of seven (7) pages, the last of which is titled “Notice of Right to File Objections to the Report and Recommendation.” ECF No. 17. The court assumes the Clerk forwarded all seven pages of the Report to Plaintiff.